IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5093 OF 2006

Smt.Sundar Balasaheb Gade, .. Petitioner.

Vs

Shri Balasaheb Narayan Dangmali, .. Respondent.

Mr R.S.Bhalerao, for the petitioner.
Mr S.N.Chandrachud, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 22.08.2006
PC:

1. Heard the learned counsel for the parties.

2. This petition is directed against the concurrent findings recorded by the courts below decreeing the respondents-plaintiff's suit on the ground of sub-letting. The appeal court has allowed the cross objections filed by the petitioner-plaintiff and has decreed the suit also on the ground that the petitioner-defendant has acquired alternate and suitable premises for her residence.

3. Mr Bhalerao, learned counsel for the petitioner, at the outset, submitted that it has not been proved by the plaintiff that the person, who was allegedly inducted by the petitioner as sub-tenant, was in exclusive possession of the suit premises and that he was paying rent to the petitioner. In support of this

contention a reliance was placed on the judgment of this Court in Surendra M Wagh & Anr Vs. Manohar Krishna Kale and Anr, 2006 (4) ALL MR 19. Insofar as the ground of acquiring an alternative premises is concerned, he submitted that except the premises at Shukrawar Peth, Pune, the plaintiff has miserably failed to establish that the other premises, mentioned in paragraph 11 of the appeal court judgment, also belonged to the petitioner. Insofar as the premises at Shukrawar Peth is concerned, where the petitioner is presently residing, her share is not defined or separated and, therefore, it cannot be said that she acquired the alternative premises as alleged.

4. I perused the judgments of the courts below. Both the courts, after appreciating the available material on record, have concurrently held that the suit premises was found to be in possession of one Rajesh More and that he was inducted in the suit premises by the petitioner as sub-tenant. It is not in dispute that the petitioner stays at the premises at Shukrawar Peth and does not stay in the suit premises. That itself is sufficient to establish that More is in exclusive possession of the suit premises. In the facts of this case, the judgment relied upon, in my opinion, is of no avail to the petitioner. The petitioner has failed to

prove, as to how Rajesh More came in possession of the suit tenement and what is her relationship with him. Similarly, insofar as the alternative accommodation is concerned, admittedly the petitioner stays in the premises at Shukarwar Peth and that is held to be alternative premises by the court below after taking into consideration the entire material on record. Moreover, the flat at Laxmi Narayan Apartments, in possession of her son, admeasuring 500 sq ft, according to the plaintiff, was purchased by her. Considering that there are concurrent findings recorded by both the Courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India to disturb the findings of fact, I am not inclined to interfere in the present writ petition. The writ petition is accordingly dismissed.

(D.B.BHOSALE,J.)